IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA, Plaintiff, Versus CHARLES D. WEST, SCOTT E. RUZIECKI, Defendants.	No. CR-14-66-EFS-1&2 August 25, 2014 Spokane, Washington Pages 1 - 51

TRANSCRIPT OF PROCEEDINGS

CHANGE OF PLEA HEARING

BEFORE THE HONORABLE EDWARD F. SHEA

APPEARANCES:

For the Plaintiff: U. S. ATTORNEY'S OFFICE
BY: Timothy Ohms
Attorney at Law
P. O. Box 1494
Spokane, WA 99210

For the Defendant: West FEDERAL PUBLIC DEFENDERS
BY: Robert Fischer
Attorney at Law
10 N. Post, Suite 700
Spokane, WA 99201

For the Defendant: Ruziecki LAW OFFICES OF JEFFRY FINER, PS
BY: Jeffry Finer
Attorney at Law
35 W. Main
Spokane, WA 99201

COURT REPORTER: Mark A. Snover, RPR, RMR, CRR, CSR
P. O. Box 1633
Spokane, WA 99210-1633
(509) 458-3434

Proceedings recorded by mechanical stenography, transcript produced by computer.

AUGUST 25, 2014 - 9:00 a.m.

(Whereupon Court reconvened in the courtroom at 9:00 a.m.)

THE COURT: Good morning everyone, please be seated.

THE DEPUTY CLERK: The matter now before the Court is United States of America versus Scott Ruziecki and Charles West.

Case number CR-14-66-EFS. Defendants number one and two.

Time set for pretrial conference, change of plea.

09:07AM Counsel, please state your presence for the record. Thank you.

MR. OHMS: Good morning, Your Honor, Tim Ohms on behalf of the government.

MR. FISCHER: Good morning, Your Honor, Bob Fischer for Mr. Charles West.

MR. FINER: And Jeff Finer, Your Honor for Mr. Ruziecki.

THE COURT: Good morning, counsel.

What brings us together today?

09:07AM MR. OHMS: Your Honor, this was the time originally set for pretrial in both cases.

The government has reached a proposed resolution with both defendants and has a proposed plea agreement that's been signed by all parties.

With regard to the defendant, Mr. West, which the

Court previously had a courtesy copy of --

THE COURT: I have a Charles West agreement.

MR. OHMS: Correct.

THE COURT: 11 (c) (1) (c).

MR. OHMS: Correct.

THE COURT: Is there a Ruziecki agreement as well?

MR. OHMS: The government has also, since then, reached an agreement with Mr. Ruziecki.

And once that has been signed, we would be able to 09:08AM **hand that up to the Court as well. If the Court has time to hear that.**

THE COURT: I would like to certainly take look at it. Thank you.

MR. OHMS: Your Honor, may I hand up the signed original plea agreement for defendant Charles West?

THE COURT: I thought I had it. I guess I have a copy. Okay. Yes, you may. Thank you.

(Handing documents to Court.)

MR. OHMS: And I also have a signed original proposed 09:09AM **plea agreement for defendant Mr. Scott Ruziecki.**

If I may hand that up as well, Your Honor.

THE COURT: You may.

(Handing documents to Court.)

THE COURT: Are these mirror images?

MR. OHMS: No, Your Honor.

THE COURT: They're not. Okay.
Is the factual recitation the same?
MR. OHMS: No, Your Honor.
THE COURT: Okay. All right.
I think I have a sense -- I've read West's before. Let me take a look at Mr. Ruziecki's.
MR. OHMS: If I may, Your Honor, Mr. Ruziecki was charged in the third count, which was a bank robbery that occurred after Mr. West's arrest.
09:10AM So he was charged as the only defendant in that count. He's pleading to that count as well, count three.
So his plea agreement is not an 11 (c) (1) (c) plea agreement, it is not entered under that rule.
He is pleading to a third count and --
THE COURT: A third bank robbery August 16th.
MR. OHMS: Correct, Your Honor.
So there are some additional facts relating to that and a further statement about his own statements -- his own post-arrest Miranda statements are contained in that as well.
09:10AM THE COURT: All right.
MR. OHMS: And the government's sentencing recommendation is different.
THE COURT: Let's take a quick look.
MR. OHMS: Which is at paragraph nine.
THE COURT: It looks purely straightforward to me.

Thank you.

All right. If you two would come to the podium, please, with your attorneys.

And we'll administer an oath to you. Swear you in.

THE DEPUTY CLERK: If you both would please raise your right hand.

WHEREUPON,

SCOTT RUZIECKI

09:11AM &

CHARLES WEST

having been first duly sworn

testified as follows:

THE COURT: Okay. I'm going to go over a number of things with both of you and then I'll take Mr. Ruziecki first and then Mr. West, for the completion of the plea agreement.

I'll ask you a series of questions and I ask these questions of every defendant who intends to plead guilty, in large part.

09:12AM So I'm not doing anything unusual for your case, except for the factual pattern, of course, because that's unique to your case.

If at any time I ask you a question that's confusing, please tell me that it is and I'll say it in a different way.

And will you both agree to do that, Mr. Ruziecki?

MR. RUZIECKI: Yes, sir.

THE COURT: Mr. West?

MR. WEST: Yes, sir.

THE COURT: And if you need any time to privately confer with your attorney, tell me that as well and I'll give that you time also.

Mr. Ruziecki, do you understand?

MR. RUZIECKI: Yes, sir.

THE COURT: Mr. West?

09:12AM MR. WEST: Yes, sir.

THE COURT: What's the highest grade in school that you completed?

MR. RUZIECKI: 12th grade.

THE COURT: Where?

MR. RUZIECKI: East Valley High School.

MR. WEST: Got a GED.

THE COURT: I'm sorry, say that again.

MR. WEST: I got a GED.

I got my course out of school. I did it in an 09:12AM institution. I do have a GED.

THE COURT: Has anybody threatened you, any member of your family, or anyone close to you, to force you to sign a plea agreement?

Mr. Ruziecki?

MR. RUZIECKI: No, sir.

THE COURT: Mr. West?

MR. WEST: No.

THE COURT: Before doing so, did you fully discuss it with your attorney, Mr. Ruziecki?

MR. RUZIECKI: Yes, sir.

THE COURT: Mr. West?

MR. WEST: Yes, sir.

THE COURT: Mr. Ruziecki, on how many occasions do you think you and your attorney met?

09:13AM MR. RUZIECKI: Half a dozen, sir.

THE COURT: And during those half a dozen meetings, did you go over the case with him?

MR. RUZIECKI: Yes, sir.

THE COURT: And he told you what evidence the government had and you responded to that; is that correct?

MR. RUZIECKI: Yes, sir.

THE COURT: And at some point you discussed the possibility of a plea?

MR. RUZIECKI: Yes, I did, sir.

09:13AM THE COURT: And then at some point he brought you a signed plea agreement.

MR. RUZIECKI: Yes, sir.

THE COURT: And when did that happen? As best you could tell.

MR. RUZIECKI: A few days ago, sir.

THE COURT: And during the course of that particular meeting did you fully discuss the plea agreement and what it meant?

MR. RUZIECKI: Yes, sir.

THE COURT: Did he answer all your questions?

MR. RUZIECKI: Yes, sir.

THE COURT: Are you satisfied with his services?

MR. RUZIECKI: Yes, sir.

THE COURT: Mr. West, on how many occasions did you
09:14AM meet with your attorney, Mr. Fischer?

MR. WEST: Half a dozen times.

THE COURT: And during those times did he describe the case that the government had, as far as evidence is concerned?

MR. WEST: Yes.

THE COURT: And did you share with him your views of that?

MR. WEST: Yes, Your Honor.

THE COURT: At some point did he discuss the possibility of pleading guilty?

09:14AM MR. WEST: Excuse me?

THE COURT: Did he, did he discuss the possibility that you might enter a guilty plea?

MR. WEST: Yes, Your Honor.

THE COURT: And at some point did he bring you a proposed plea agreement?

MR. WEST: Yes, Your Honor.
THE COURT: Did you go over that in detail with him?
MR. WEST: Yes, Your Honor.
THE COURT: And did Mr. Fischer answer all of your questions?
MR. WEST: Yes.
THE COURT: Are you satisfied with his services as your attorney?
MR. WEST: Yes, Your Honor.
09:14AM THE COURT: As you stand before me today, Mr. Ruziecki, are you under the influence of drugs or alcohol?
MR. RUZIECKI: No, sir.
THE COURT: Mr. West?
MR. WEST: No, sir.
THE COURT: Are you under the care of a medical care provider, for any condition?
MR. RUZIECKI: No, sir.
MR. WEST: Mental health.
THE COURT: Are you taking medication, Mr. Ruziecki,
09:15AM for any condition.
MR. RUZIECKI: No, sir. Nothing.
THE COURT: Mr. West, are you taking medication?
MR. WEST: Yes.
THE COURT: Okay.
Do you know the nature, do you know the name of it?

MR. WEST: 300 milligrams of amitriptyline and 300 milligrams of trazodone.

THE COURT: Okay. So amitriptyline and trazodone?

MR. WEST: Yes, Your Honor.

THE COURT: And who prescribed those for you?

MR. WEST: Doctor --

THE COURT: Mr. Fischer, are you aware of this?

MR. FISCHER: Yes, Your Honor.

THE COURT: Have you taken those medications last

09:15AM night?

MR. WEST: Yes, sir.

THE COURT: Do you take them at night before you go to sleep?

MR. WEST: Yes, Your Honor.

THE COURT: Are you under the influence of them now, so that --

MR. WEST: No.

THE COURT: So that you're not able to understand what I'm talking about.

09:15AM MR. WEST: No, Your Honor.

THE COURT: Mr. Fischer, have you noticed any difficulties in communicating with your client?

MR. RUZIECKI: No, Your Honor.

THE COURT: Do you have any reason to question his ability to go forward today?

MR. RUZIECKI: No, Your Honor, I do not.

THE COURT: Okay.

You say a mental health doctor. Is this for depression?

MR. WEST: Yes, Your Honor.

THE COURT: Are you aware of that, Mr. Fischer?

MR. FISCHER: Absolutely, Your Honor.

THE COURT: Is there any other mental health condition I should be aware of?

09:16AM

MR. FISCHER: Well, Your Honor, I've had Mr. West evaluated by Doctor Paul Wirt and Doctor Wirt has provided a report to me. I can provide that to you, Your Honor.

THE COURT: Well, I -- have they diagnosed any condition, other than depression, which I should be aware of?

MR. RUZIECKI: His diagnosis AXIS-I is malingering; methamphetamine dependence in remission as a result of confinement; substance-induced psychosis, episodic and severe, remission as a result of confinement; an Antisocial Personality Disorder, AXIS-III, referred to physician. AXIS-IV --

09:17AM

THE COURT: Is there anything that, when you look at that, rather than read them all into the record, when you look at the list of those diagnosis, is there anything that you think I should be aware of?

MR. FISCHER: No, Your Honor.

THE COURT: Thank you.

You have a number of rights under the United States Constitution. By pleading guilty you will give up these rights. And I'm going to review them with you now. Please listen carefully.

You have a right to plead not guilty and to persist in pleading not guilty.

And if you do so, you're presumed to be innocent.

The government then has the burden of proving your guilt beyond a reasonable doubt at trial.

09:18AM At all stages of the proceedings you are entitled to have the assistance of an attorney.

And if you cannot afford one, one will be appointed at no expense to you.

So, even if there's no trial because I accept your guilty plea, you still have the right to those free legal services for both sentencing and appeal.

At trial, you and that attorney have the right to subpoena people to require them to come to court and testify for you.

09:18AM You have the right to ask all of the witnesses questions while they're under oath.

You have the right to decide whether you'll take the stand and testify, whether you'll call witnesses, or whether you'll put on any evidence.

If you decided at such a trial that you were not going to testify, then I would explain to the jury that they could not consider that in determining your guilt.

Do you understand you have these rights, Mr. Ruziecki?

MR. RUZIECKI: Yes, sir.

THE COURT: Do you understand by pleading guilty there will be no trial and you will have given up these rights?

MR. RUZIECKI: I do, sir.

THE COURT: Mr. West, do you understand you have all of the rights I've just recited?

09:19AM MR. WEST: Yes, Your Honor.

THE COURT: And do you understand that if I accept your guilty plea today there will be no trial and you will have given up these valuable rights?

MR. WEST: Yes, sir.

THE COURT: Okay.

Just take a quick look at one other thing.

Each of you has reached a plea agreement with the United States Attorney's Office.

It contains a provision which is called, a paragraph 09:19AM 15, additional violations of law can void the plea agreement.

So, even though you have a deal with the, in writing, with the U.S. Attorney's Office, you can lose the benefits of that deal in two ways:

You can test positive for any controlled substance between now and sentencing.

Or you can be charged or convicted of any criminal offense whatsoever between now and sentencing.

If either of those things occurred, the United States Attorney's Office could notify you that it was walking away from the deal and it was all off, and then take to you trial and try to prosecute you and convict you on any count in the indictment.

Or, it could simply tell you that it was going to recommend less favorable terms to me for your sentence.

09:20AM Do you understand what I've explained to you, Mr. Ruziecki?

MR. RUZIECKI: Yes, I do, sir.

THE COURT: Mr. West?

MR. WEST: Yes, sir.

THE COURT: Does the agreement, which you signed after you fully discussed it with your attorney, does it contain all of the agreements between you and the United States Attorney's Office, Mr. Ruziecki?

MR. RUZIECKI: Yes, sir.

09:20AM THE COURT: Mr. West?

MR. WEST: Yes, Your Honor.

THE COURT: Okay.

Mr. West, if you and Mr. Fischer will have a seat we'll come back to you in just a bit.

Mr. Ruziecki --

MR. RUZIECKI: Yes, sir.

THE COURT: -- there are three counts that you are intending to plead guilty to, according to this agreement. One, two, and three.

These are contained, these are Class C felonies and the maximum statutory penalty for bank robbery is not more than 20 years in prison, a fine not to exceed $250,000, a term of supervised release of not more than three years, restitution, and a $100 mandatory payment.

09:21AM Do you understand that?

MR. RUZIECKI: Yes, sir.

THE COURT: Supervised release is that period of time after imprisonment when you must follow conditions that I impose.

And it's important, because if at a hearing I find that you violated one or more of those conditions, I can put you back in prison for all or part of the term of supervised release, without credit for time you previously served on post-release supervision.

09:22AM Do you understand why it's important?

MR. RUZIECKI: Yes, Your Honor.

THE COURT: Do you also understand that I could impose consecutive sentences, one after the other, and total them and that that could possibly result in penalties of up to 60 years in prison and a fine up to $750,000?

MR. RUZIECKI: Yes, I understand that.

THE COURT: This agreement's between you and the U.S. Attorney's office, it doesn't bind me.

I'll listen to you and Mr. Finer, the U.S. Attorney, I'll read the Presentence Investigative Report, which you'll have a copy of, and then I'll look at the sentencing law.

That requires me to do a sentencing guideline analysis. That tells me what a reasonable sentence might be in your case.

09:22AM And, after that, I'll impose a sentence which I think is sufficient, but not greater than necessary, to carry out the goals and purposes of that sentencing law.

If, at the end of that time, that process, I impose those very severe maximums, including consecutively, that would not give you a basis to withdraw your guilty pleas.

Do you understand that?

MR. RUZIECKI: Yes, I understand.

THE COURT: To convict you of the offense charged in count one of the indictment, the United States has to prove 09:23AM beyond a reasonable doubt at trial the elements of the crime of bank robbery. And these are the elements:

First, on or about August 9, 2013, the defendant, Scott E. Ruziecki, took money belonging to Banner Bank.

Second, you, or the person whom the defendant -- let's see. It says, second, the defendant, or the person whom the defendant used force, violence, or intimidation in doing so. That makes no sense to me.

MR. FINER: I think the term "aided" would have come after the word "defendant," the second use of the word "defendant" in the line.

THE COURT: Well, let's take a look at the expression in the West agreement and see if it's any different.

(Pause.)

The words aided and abetted are not there.

09:24AM Were those intended to be included?

MR. OHMS: Not in Mr. Ruziecki's plea agreement, no.

THE COURT: Okay.

Well, something reads incorrectly there. It seems to me that it reads incorrectly, because it lacks a verb.

So I think it should read, if you tell me it's correct, second, the defendant, used force, violence, or intimidation in doing so.

Is that your intent, Mr. Ohms?

MR. OHMS: Yes, Your Honor.

09:24AM THE COURT: I'm going to line through the words, "or the person whom the defendant." I'm going to line that through and I'm going to initial it.

Second, the defendant used force, violence, or intimidation in doing so.

Does it now read correctly, Mr. Ohms?

MR. OHMS: Yes, Your Honor.
MR. FINER: I concur.
THE COURT: Is that acceptable to you?
MR. FINER: It is.
THE COURT: Third, the deposits of Banner Bank were then insured by the Federal Deposit Insurance Corporation.
Do you understand those are the elements of count one?
MR. RUZIECKI: Yes, Your Honor.
THE COURT: And then, as to count two, again, bank robbery, again, violation of 18 United States Code, Section 2113 (A).
09:25AM
Count two, prove beyond a reasonable doubt at trial by the United States Attorney's Office of the elements of the crime. These are the elements:
First, on or about August 12, 2013, the defendant, Scott E. Ruziecki, took money belonging to U.S. Bank.
Second, the defendant used force, violence, or intimidation in doing so.
Third, the deposits of the U.S. Bank were then insured by the Federal Deposit Insurance Corporation.
09:25AM
Do you understand those are the elements of bank robbery?
MR. RUZIECKI: Yes, Your Honor.
THE COURT: And as to count three, again, bank robbery, the same statute, and the same, the same elements,

which would have to be proved beyond a reasonable doubt at a trial by the United States Attorney's Office:

First, on or about August 16, 2013, the defendant, Scott E. Ruziecki, took money belonging to Banner Bank.

Second, the defendant used force, violence, or intimidation in doing so.

And third, the deposits of Banner Bank were then insured by the Federal Deposit Insurance Corporation.

Do you understand those are the elements also of count three?

09:26AM

MR. RUZIECKI: Yes, Your Honor.

THE COURT: On page four, paragraph five, entitled factual basis and statement of facts, over on to the following pages until it reaches its conclusion on page eight, line 15, there's a paragraph entitled, factual basis and statement of facts.

Do you stipulate and agree with the United States Attorney's Office that the facts in that paragraph on those pages are accurate?

09:27AM

MR. RUZIECKI: Yes, Your Honor.

THE COURT: You've reviewed those with Mr. Finer, haven't you?

MR. RUZIECKI: Yes, Your Honor.

THE COURT: And do you believe that they are accurate?

MR. RUZIECKI: Yes, I do, Your Honor.

THE COURT: And do you believe, given your knowledge of the case, and the evidence that Mr. Finer and you have gone over, that the government says it has and could use to prove your guilt, that, indeed, if this case went to trial, the facts in that paragraph could be proved beyond a reasonable doubt by the United States Attorney's Office.

MR. RUZIECKI: I believe so, Your Honor.

THE COURT: And finally, does it give me, as the judge presiding at your plea, an adequate basis to accept your guilty
09:27AM plea to counts one, two, and three?

MR. RUZIECKI: Yes, Your Honor, I believe it does.

THE COURT: I'll come back to that in a bit.

On page eight, paragraph six, entitled, waiver of inadmissibility of statements.

Typically, statements you make in the course of plea discussions are not admissible against you.

But here you're saying that you give up and waive that inadmissibility, should you withdraw your guilty plea or breach the agreement before sentencing.

09:28AM Do you understand that?

MR. RUZIECKI: Yes, Your Honor.

THE COURT: And that means that those statements could be used against you by the case-in-chief, by, in the government's case-in-chief.

Do you understand that?

MR. RUZIECKI: Yes, Your Honor.

THE COURT: Is this paragraph intended to read as it currently does? Because it refers several times to an 11 (c) (1) (c) plea. And that's paragraph six.

It's a mirror image of the one in the West plea agreement and I don't know whether this is now SOP here in the U.S. Attorney's Office in Spokane.

MR. OHMS: No, Your Honor. This is not an 11 (c) (1) (c) plea. So that would be in error.

09:29AM THE COURT: Okay.

Well, then how do you want to modify this?

MR. OHMS: We --

THE COURT: Just take a look and why don't you folks, why don't you think about that and I'll come back to that paragraph.

MR. OHMS: Very good.

THE COURT: In return for your plea of guilty to counts one, two, and three, Mr. Ruziecki, has the United States Attorney's Office agreed that, here in Eastern

09:30AM Washington, it will not bring any additional charges against you based on information that it now possesses, arising out of the illegal activity charged in the indictment?

MR. RUZIECKI: I don't believe they can bring any more charges other than these, Your Honor.

THE COURT: Unless you breach the plea agreement before or after sentencing, correct?

MR. RUZIECKI: Yes, Your Honor.

THE COURT: Okay.

There's a guideline calculation the parties have done and I have to do one. It advises me what a reasonable sentence might be.

Here, the parties have done one, and from the parties' calculations, without telling you they're correct, this is what the parties have done.

09:30AM Every crime is assigned a base offense level number. So, it doesn't matter, any crime gets a number. It's called a base offense level number. It's different depending upon the crime.

Here, that base offense level number for bank robbery in each of the counts is 20.

Because the property was from a financial institution, it's increased to 22.

Because there are multiple counts, that is counts one, two -- counts one, two, and three, you do a special multiple 09:31AM count analysis and there is a four-level increase to the count with the highest offense level.

And then from that calculation, the Court is being asked to take three levels off because you've timely accepted responsibility.

Is that your understanding?

MR. RUZIECKI: Yes, that's my understanding, Your Honor.

THE COURT: We can't tell you what your final Sentencing Guidelines category is, because I haven't seen your Presentence Investigative Report and until I see that, I can't tell you about that.

Do you understand that?

MR. RUZIECKI: That's what I understand, Your Honor.

THE COURT: Okay.

09:32AM For length of imprisonment, has the United States agreed to recommend a sentence that is not greater than the low end of the applicable guideline range that I determine?

So I determine a guideline range --

MR. RUZIECKI: Yes, sir.

THE COURT: -- it has a low end --

MR. RUZIECKI: Yes, sir.

THE COURT: -- and the government's agreed it won't recommend a sentence higher than that low end.

Is that your understanding?

09:32AM MR. RUZIECKI: Yes, I understand that to be the case.

THE COURT: Okay.

And you want credit for time served; is that correct?

MR. RUZIECKI: Almost 13 months, sir.

THE COURT: Sure.

And you want credit for that --

MR. RUZIECKI: Yes, sir.

THE COURT: -- time served.

As to a criminal fine, I must impose one, unless I find you and your family just cannot pay it.

Do you understand?

MR. RUZIECKI: Yes, sir.

THE COURT: Are you asking for three years of supervised release?

MR. RUZIECKI: I am, sir.

09:32AM THE COURT: And here, it only refers to standard conditions of supervised release. There's no reference to special conditions.

So, it is my understanding that the parties recognize that I will be able to impose and will impose special conditions in addition to the standard conditions.

Is that your understanding?

MR. RUZIECKI: Yes, sir.

THE COURT: Okay.

As to restitution, do you agree that an order of 09:33AM restitution in the amount of $4,290, with $3,283 to be paid jointly and severally with codefendant Charles D. West and to pay interest on said amount?

MR. RUZIECKI: I believe the interest was negotiable still.

MR. FINER: If I may be heard on that.

THE COURT: Sure.

There's an extra microphone for you. On the other side, to your left.

MR. FINER: Reviewing this, this morning, Your Honor, I don't see a point that I had raised or wished to have raised, which would be the option to argue to not impose the interest. And I don't see that reflected in the agreement.

THE COURT: Okay.

Then after the word -- and you want to add the words, "reserves the right to contest payment of interest?"

09:34AM

MR. FINER: I would like to be heard at sentencing on that, yes, Your Honor.

THE COURT: So it reads now, "and reserves the right to contest payment of interest on said amount."

MR. FINER: Thank you.

THE COURT: I've initialed that and at some point I'll hand it back to you folks for initialing.

There are three counts, Mr. Ruziecki. Each count has a Special Penalty Assessment of a hundred dollars. A total of $300.

09:34AM

MR. RUZIECKI: Yes, Your Honor.

THE COURT: And you're willing to pay that while you're incarcerated, through the Inmate Financial Responsibility Program.

MR. RUZIECKI: Yeah, I'll be working, sir.

THE COURT: You will?

MR. RUZIECKI: Yes, sir.

THE COURT: Thank you.

Every defendant has a right to appeal their judgment of conviction and sentence.

Here, you're expressly waiving, giving up that right to appeal your conviction and sentence that I impose, including any restitution order.

That's your agreement, isn't it?

09:35AM MR. RUZIECKI: Yes, Your Honor.

THE COURT: And you're also waiving your right to file post-conviction attacks, including one that's called a writ of habeas corpus, which means, let me free, I'm being held unconstitutionally, with one exception:

If your attorney was infective in assisting you, and you did not and could not have known about it by the time of sentencing, then you would still have that right.

Do you understand that?

MR. RUZIECKI: I understand, sir.

09:35AM THE COURT: Okay.

Mr. Ohms, do you have something drafted for us? Or some revision that you would like me to incorporate.

I tell you what I'm going to do, folks. Miss Vargas? I'm going to hand this back to you.

Why don't you folks initial the plea agreement where

I've made insertions and then interline the corrections you want on that section of the plea agreement.

(Handing plea agreement back to counsel.)

MR. FINER: Your Honor, if I may hand this back up to the bench.

Paragraph six at page eight does not yet have your signature. We are proposing the striking of a portion of the sentence that refers to the 11 (c) (1) (c) language that carried over inadvertently from Mr. West's plea.

09:38AM THE COURT: If you folks are satisfied with that, let's go over paragraph six then, Mr. Ruziecki.

MR. FINER: Very good.

THE COURT: Those statements that are typically inadmissible, that you make in the course of plea discussions, you're agreeing that, in the event that you withdrew your guilty plea, or that you breached the plea agreement, then the waiver of inadmissibility would apply.

To put it another way, any statement you may have made during plea discussions with the government or the

09:38AM representatives, can be used against you if this case, if the plea agreement blew up or the parties withdrew from it or if you violated it and breached it in some fashion and you ended up at trial on these counts, then they can use those statements against you.

Do you understand that?

MR. RUZIECKI: Yes, Your Honor, I understand that.

THE COURT: Okay. Great.

All right. Then let's get to the pleas themselves. Let's take a look at this over here.

Your indictment charges as follows:

Count one, that on or about August 9, 2013, in the Eastern District of Washington, Scott E. Ruziecki and Charles D. West, by force, violence, and by intimidation, did take from the person and presence of a bank teller/customer service representative, approximately $706 of money belonging to and in the care, custody, and control and management of Banner Bank, located inside Safeway store at 3919 North Market Street, Spokane, Washington; the deposits of which were then insured by the Federal Deposit Insurance Corporation, in violation of 18 United States Code, Section 2113 (A) and 2.

09:39AM

To that count of the indictment how do you plead, guilty or not guilty?

MR. RUZIECKI: Guilty, Your Honor.

MR. FINER: May I be heard on that as well, just because of the reading of it, Your Honor?

09:40AM

THE COURT: Sure.

MR. FINER: The Court read the indictment with the conjunctive and between the three different methods of committing the offense.

THE COURT: I read it that way because that's --

MR. FINER: Because that's how it's written.

And indictments always charged in the conjunctive.

But he is pleading, under paragraph or section four of the plea agreement, not to have using force or violence, but intimidation. Which is his right. The proves need not prove all three of the elements of the indictment. It is sufficient if he agrees that his note would have been an intimidation.

We're not suggesting or agreeing that there was force or violence.

09:40AM And that's the difficulty when we have a rule that allows an indictment to be charged in the conjunctive.

He is pleading in the disjunctive. He used intimidation. The note was intimidating.

THE COURT: To that count, how do you plead, guilty or not guilty?

MR. RUZIECKI: Guilty, Your Honor.

THE COURT: Count two charges as follows:

That on or about August 12, 2013, in the Eastern District of Washington, Scott E. Ruziecki and Charles D. West, 09:41AM by force, violence, and by intimidation, did take from the person and presence of a bank teller/customer service representative, approximately $2,577 of money belonging to and in the care, custody, control, and management of U.S. Bank, located inside the Albertsons store at 8851 East Trent, Spokane, Washington, the deposits of which were then insured by the

Federal Deposit Insurance Corporation, in violation of 18 United States Code, Sections 2113 (A) and 2.

To that count of the indictment, with the same understandings that Mr. Finer has already articulated regarding count one, how do you plead, guilty or not guilty?

MR. RUZIECKI: Guilty, Your Honor.

THE COURT: Are you pleading guilty because you truly are guilty?

MR. RUZIECKI: Yes, Your Honor, I am.

09:41AM THE COURT: Count three, that on or about August 16, 2013, in the Eastern District of Washington, Scott E. Ruziecki, by force, violence, and by intimidation, did take from person, the person and presence of a bank teller/customer service representative approximately $1,007 of money belonging to and in the care, custody, control, and management of Banner Bank, located at 933 East Mission, Spokane, Washington, the deposits of which were then insured by the Federal Deposit Insurance Corporation, and in violation of 18 United States Code, Section 2113 (A), again, with the same understandings that Mr. Finer has articulated regarding count one. To that count three of the indictment, how do you plead, guilty or not guilty?

09:42AM

MR. RUZIECKI: I plead guilty.

THE COURT: Are you pleading guilty because you truly are guilty?

MR. RUZIECKI: Yes, Your Honor.

THE COURT: Were you in the Eastern District of Washington in August of last year?

MR. RUZIECKI: Yes, I was, sir.

THE COURT: Were you here in the Spokane area?

MR. RUZIECKI: Yes, sir.

THE COURT: And at that time did you know Charles D. West?

MR. RUZIECKI: Yes, Your Honor.

THE COURT: Okay.

09:43AM Tell me about the robbery of the Banner Bank located at the Safeway store on 3919 North Market Street.

MR. RUZIECKI: Oh, I basically filled out a withdrawal slip with the demands to unlawfully take money from the bank, sir.

THE COURT: Did you present that slip to the teller?

MR. RUZIECKI: Yes, sir.

THE COURT: Okay.

And where was Mr. West?

MR. RUZIECKI: Mr. West was in a vehicle outside of 09:43AM the store.

THE COURT: And did he know you were going to the bank to rob it?

MR. RUZIECKI: Yes, sir.

THE COURT: And he agreed with you to be involved in that?

MR. RUZIECKI: Yes, sir.

THE COURT: And the note itself -- let's talk about that -- said, give me your money. Is that correct?

MR. RUZIECKI: Yes, Your Honor.

THE COURT: And the teller or customer service representative did indeed give you money.

MR. RUZIECKI: Yes, Your Honor, she did.

THE COURT: And you left the bank knowing that you had just robbed the bank.

09:44AM MR. RUZIECKI: Yes, Your Honor, I did.

THE COURT: And you knew that the banks are, themselves, insured by the Federal Deposit Insurance Corporation, correct?

MR. RUZIECKI: Yes, I understand that now, sir.

THE COURT: Okay.

And that you agree that tell you used intimidation in robbing the bank; is that correct?

MR. RUZIECKI: Yes, Your Honor.

THE COURT: As to the U.S. Bank at the Albertsons

09:44AM supermarket at 8851 East Trent in Spokane on August 12, did you engage in a second bank robbery there?

MR. RUZIECKI: Yes, Your Honor.

THE COURT: And then did you in fact write out a note that said, "Give me all loose bills, no dye pack, no bait money, no one gets hurt."?

MR. RUZIECKI: Yes, Your Honor, I did.

THE COURT: And then did you say, "hundreds and fifties too."?

MR. RUZIECKI: Yes, I did.

THE COURT: Did you then leave with the note and the money?

MR. RUZIECKI: Yes, I did, Your Honor.

THE COURT: And, again, was Mr. West your partner in crime, so to speak?

09:45AM MR. RUZIECKI: Yes, Your Honor.

THE COURT: Okay.

On August 16, at the Banner Bank at 933 East Mission, were you involved in that robbery?

MR. RUZIECKI: Yes, Your Honor, I was.

THE COURT: Did you present a note that is saying you wanted fifties and hundreds and nobody had to get hurt, or words to that affect?

MR. RUZIECKI: I did not say fifties and hundreds at that time. But I did present a note similar to the other two

09:46AM bank robberies.

THE COURT: So, again, you agree that you intimidated the teller or customer service representative to give you the money that was there in the bank.

MR. RUZIECKI: Yes, Your Honor.

THE COURT: And do you recognize again that this was insured by the Federal Deposit Insurance Commission; is that correct?

MR. RUZIECKI: Yes, sir.

THE COURT: Okay.

You were, your residence was searched and you were located; is that correct, there?

MR. RUZIECKI: I wasn't at my residence, sir, I was at an associate's residence on the south hill. 6th and Arthur.

THE COURT: So you, you were detained by the police and you admitted committing all three bank robberies; is that correct?

09:46AM

MR. RUZIECKI: Yes, Your Honor.

THE COURT: And there was a fingerprint located at the teller station in the Banner Bank and the Safeway store that was identified as yours, is that correct?

MR. RUZIECKI: I believe so. The third bank, yes, sir.

THE COURT: The Court accepts the plea as knowing, intelligent, and voluntary. That's as to each count.

09:47AM

Not induced by fear, coercion, or ignorance.

And the facts admitted to by Mr. Ruziecki in open court constitute the essential elements of the crime charged in counts one, two, and three.

All pending motions denied as moot.

The Court sets Thursday, December 4th at nine a.m. in

Spokane as your sentencing date.

Mr. Finer, Mr. Ohms, is that convenient for you?

MR. OHMS: Yes, Your Honor.

MR. FINER: It appears convenient, yes, Your Honor.

THE COURT: Okay.

39 -- there will be a Presentence Investigative Report done in 35 days.

Who will do that, Mr. Barrett?

MR. BARRETT: Your Honor, that report has not yet been assigned.

09:47AM

THE COURT: That will be assigned to someone here. Mr. Finer will explain the process to you.

If there are mistakes in the report when you receive it, try to have the writer of the report correct them.

And if you can't resolve them, bring them to my attention at sentencing.

49 days from now, you must file any motions you want me to consider at the time of sentencing or you will have waived them.

09:48AM

Do you understand what I've explained to you?

MR. RUZIECKI: Yes, Your Honor.

THE COURT: Okay.

I believe that is all for the moment. Have a seat.

MR. FINER: It is.

MR. RUZIECKI: Thank you.

MR. FINER: Thank you, Your Honor.

THE COURT: Mr. West. Mr. Fischer.

You may recall that we already went over your constitutional rights and established that you were competent to proceed by going over a number of categories.

Here, you're intending to plead guilty under what's called an 11 (c) (1) (c) plea, which is a negotiated resolution between you and U.S. Attorney's Office, correct?

MR. WEST: Yes, Your Honor.

09:49AM THE COURT: And essentially it says that you've agreed to a certain prison term and you want me to accept that.

Is that true?

MR. WEST: Yes, Your Honor.

THE COURT: And that's the essence of this agreement.

Let's take a look at that prison term. Let me take a look at that.

You're agreeing to 120 months in prison. Is that correct?

MR. WEST: Yes, Your Honor.

09:49AM THE COURT: And the basis of this plea is that, if I don't accept that, then the parties go back to the indictment and you go to trial.

Do you understand that?

MR. WEST: Yes, Your Honor.

THE COURT: So, if I go lower than 120 months, then the government can say the deal's off; and if I go higher than 120 months in a sentence, then you could call the deal off. Correct?

MR. WEST: Yes, Your Honor.

THE COURT: Okay. That's the essence of what we're talking about.

You're intending to plead guilty to counts one and two of your indictment, charging you with bank robbery, in violation of 18 United States Code 2113 (A); is that correct?

09:50AM MR. WEST: Yes, Your Honor.

THE COURT: The maximum statutory penalties for each of those crimes is the same, of course.

And that's not more than 20 years, a fine not to exceed $250,000, a term of supervised release of not more than three years, and a $100 Special Penalty Assessment for each count, for a total of $200.

Do you understand that?

MR. WEST: Yes, Your Honor.

THE COURT: And you understand that I can impose those 09:50AM sentences, those severe maximum sentences, to follow consecutively, for a total of 40 years, and an aggregate fine of a half million dollars.

Do you understand that?

MR. WEST: Yes, Your Honor.

THE COURT: Supervised release, as you probably know, Mr. West, is that time after imprisonment when you must follow conditions that I impose.

If at a hearing I find you violated one or more of those conditions, I have the authority to put you back in prison for the remainder or part of the supervised release period, without any credit for time previously served on post-release supervision.

Do you understand then why it's so important to follow those conditions?

09:51AM MR. WEST: No, sir.

THE COURT: You do?

MR. WEST: Yes, Your Honor.

THE COURT: You do have a hearing before me on another case, which is a supervised release violation; is that correct?

MR. WEST: Yes, Your Honor.

THE COURT: And we're going to postpone the resolution of that until after the sentencing date.

Is that what you understand?

MR. RUZIECKI: Yes, Your Honor.

09:51AM THE COURT: Then that will be postponed to December as well.

So we'll take up your supervised release hearing on the 07-0045 case, until after we conclude sentencing in this case.

Do you understand what I've explained to you.

MR. WEST: Yes, Your Honor.

THE COURT: Okay.

Because this is an 11 (c) (1) (c), I have to decide whether I'll accept your plea today and whether I'll accept your plea agreement.

It is my policy to accept the plea, if I find that -- if I make the requisite findings, I'll accept your plea today.

But I won't accept the plea agreement until after I've read your Presentence Investigative Report. And I'm not going to see that for a couple of months or at least 35 days.

09:52AM

And I'll notify you at sentencing whether I accept it or not.

Do you understand that's how I'll proceed?

MR. WEST: Yes, Your Honor.

THE COURT: We have already gone over, as I say, your constitutional rights. Let's talk about the elements of the offense of bank robbery.

The only difference in count one and count two is the bank and the date.

09:52AM

Is that right.

MR. WEST: Yes, Your Honor.

THE COURT: So, the elements of bank robbery that have to be proved by the United States Attorney's Office on counts one and two, in order to convict you of bank robbery, first, on August 9, 2013, you took money belonging to Banner Bank or aided and abetted another in doing so.

And then, on count two, on August, on or about August 12, 2013, you took money belonging to the U.S. Bank or aided and abetted another in doing so.

Those are the first elements of count one and two.

Do you understand that?

MR. WEST: Yes, Your Honor.

THE COURT: Counts two, or excuse me, elements two and three, or second and third, of both counts are the same.

09:53AM That you, or the person whom you aided and abetted, used force and violence or intimidation in doing so.

And third, the deposits of Banner Bank, count one, and U.S. Bank, count two, were then insured by the Federal Deposit Insurance Corporation.

Those are the elements of the crimes charged in counts one and two.

Do you understand that?

MR. WEST: Yes, Your Honor.

THE COURT: On page four, paragraph five, continuing

09:54AM over to page eight, there's a paragraph entitled, factual basis and statement of facts.

Do you agree with the United States that those facts are accurate?

MR. WEST: Yes, Your Honor.

THE COURT: And do you agree that, if this case had gone to trial, the United States could prove the facts in that paragraph beyond a reasonable doubt?

MR. WEST: No, Your Honor.

THE COURT: No?

MR. WEST: Sorry, yes.

THE COURT: Okay.

And you've discussed this paragraph with Mr. Fischer, haven't you?

MR. WEST: Yes, Your Honor.

09:54AM THE COURT: And you know that the facts in that paragraph, what the government believes it can prove by evidence in court, beyond a reasonable doubt, don't you?

MR. WEST: Yes, Your Honor.

THE COURT: And you know from your own personal knowledge of the case whether those facts are true, correct?

MR. WEST: Yes, Your Honor.

THE COURT: And they are true, aren't they?

MR. WEST: Yes, Your Honor.

THE COURT: And they could be proved beyond a reasonable doubt by the government if this case went to trial; isn't that true?

09:55AM

MR. WEST: Yes, Your Honor.

THE COURT: And if they did prove that beyond a reasonable doubt, then the jury would convict you of counts one and two.

MR. WEST: Yes, Your Honor.

THE COURT: Okay.

And do they give me, as your judge today, an adequate factual basis to accept your pleas to counts one and two?

MR. WEST: Yes, Your Honor.

THE COURT: The parties have done a guideline calculation, which is required.

And here, the, it looks like the maximum penalty is for, one and two, is 20 years.

09:55AM But you meet the criteria for what's called a career offender.

And as a result of meeting that, you are now looking at a base offense level, for counts one and two, of 32.

And that those, you agree that count one and count two are grouped separately, according to the guidelines, but you're asking that, whatever the calculation is at that point, that I agree to take three levels off because you timely accepted responsibility; true?

MR. WEST: Yes, Your Honor.

09:56AM THE COURT: In return for your plea of guilty to counts one and two, has the United States Attorney's Office here in the Eastern District of Washington agreed that it will not bring any other charges against you, based on information it now possesses, arising out of the illegal activity charged in the indictment?

MR. WEST: Yes, Your Honor.

THE COURT: And that is unless you breach the plea agreement before or after sentencing. Is that correct?

MR. WEST: Yes, Your Honor.

THE COURT: Okay.

The second component of your guideline calculation is your criminal history category.

That's the sum total of your countable past conviction points.

09:57AM And no one -- it's clear that, in the past, you have been convicted of bank robbery in 2000 and again in 2007.

You got 63 months in the 2000 case and 78 months in the 2007 case.

And so it looks like you have a Criminal History Category VI, but I can't tell you that for sure, until I see your report.

Do you understand that?

MR. WEST: Yes, Your Honor.

THE COURT: Okay.

09:57AM You've already agreed that you're asking for 120 months in prison, correct?

MR. WEST: Yes, Your Honor.

THE COURT: As to a fine, I must impose one, unless I find you and your family just cannot pay it.

Do you understand?

MR. WEST: Yes, Your Honor.

THE COURT: Supervised release.

Are you asking for a three-year term of supervised release on standard conditions?

MR. WEST: Yes, sir.

THE COURT: And do you understand that I can impose some special conditions that the probation office might recommend?

MR. WEST: Yes, Your Honor.

09:57AM THE COURT: And that I might suggest myself.

MR. WEST: Yes, Your Honor.

THE COURT: As to restitution, do you agree to an order of restitution in the amount of $706 to Banner Bank for count one and $2,577 to U.S. Bank for count two, that's jointly and severally with Scott Ruziecki, and to be paid in installments within 13 years of the date of this plea.

Is that correct?

MR. WEST: Yes, Your Honor.

THE COURT: What's the status of interest?

09:58AM MR. FISCHER: Your Honor, Mr. Ohms and I have agreed that I can argue when and if interest would be applicable.

THE COURT: I'm going to put the word "reserved" -- I'm going to put the word "reserved" beside that, indicating that you reserve the right to argue about that. Okay?

MR. FISCHER: Very well, Your Honor.

THE COURT: That's on page 11, line five, or line four and a half.

There's a hundred dollar Special Penalty Assessment for each count.

Will you agree to pay the total of $200 while you are in the Inmate Financial Responsibility Program?

MR. WEST: Yes, Your Honor.

THE COURT: Every defendant has a right to appeal their judgment of conviction and sentence.

09:59AM In this case, you are expressly giving up your right to appeal the conviction and sentence as well as the restitution order that I impose; true?

MR. WEST: Yes, Your Honor.

THE COURT: And is it also true that you're giving up your rights to file post-conviction attacks, including a writ of habeas corpus, which means, let me free, I'm being held unconstitutionally; is that true?

MR. WEST: Yes, Your Honor.

THE COURT: There's one exception. If your attorney

09:59AM was infective in assisting you and you did not know about it and could not have known about it by the time of sentencing, then would you still have that right.

Do you understand.

MR. WEST: Yes, Your Honor.

THE COURT: Okay.

Count one of the indictment charges as follows:

That on or about August 9, 2013, in the Eastern District of Washington, Scott E. Ruziecki and Charles D. West, by force, violence, and by intimidation, did take from the person and presence of a bank teller/customer service representative, approximately $706 of money belonging to and in the care, custody, control, and management of Banner Bank, located inside the Safeway store at 3919 North Market Street, Spokane, Washington, the deposits of which were then insured by
10:00AM the Federal Deposit Insurance Corporation, and in violation of 18 United States Code, Section 2113 (A) and 2.

To that count of the indictment how do you plead, guilty or not guilty?

MR. WEST: Guilty.

THE COURT: On count two, that on or about August 12, 2013, in the Eastern District of Washington, Scott E. Ruziecki and Charles D. West, by force, violence, and by intimidation, did take from the person and presence of a bank teller/customer service representative, approximately $2,577 of money belonging
10:01AM to and in the care, custody, control, and management of U.S. Bank, located inside the Albertsons store at 8851 East Trent, Spokane, Washington, the deposits of which were then insured by the Federal Deposit Insurance Corporation, in violation of 18 United States Code, Section 2113 (A) and 2.

To that count of the indictment how do you plead, guilty or not guilty?

MR. WEST: Guilty.

THE COURT: Are you pleading guilty because you truly are guilty?

MR. WEST: Yes, Your Honor.

THE COURT: On those dates that I recited, that is August 9th and August 13 or August 12th, were you -- in 2013 -- were you here in the Spokane area?

MR. WEST: Yes, Your Honor.

10:01AM THE COURT: And did you help Mr. Ruziecki rob the banks, the Banner Bank at the Safeway store on North Market Street?

MR. WEST: Yes, Your Honor.

THE COURT: And did you help him rob the bank at the Albertsons store on 8851 East Trent Street, Spokane?

MR. WEST: Yes, Your Honor.

THE COURT: Okay.

And you knew that, when he went in there, he was going to rob the bank and you were going to and he was going to do so by intimidation; is that correct? 10:02AM

MR. WEST: Yes, Your Honor.

THE COURT: And you aided and abetted him in doing so.

MR. WEST: Yes, Your Honor.

THE COURT: And you, and you, I assume -- did you then take some or all of the money? Did you get some money?

MR. WEST: Yes, Your Honor.

THE COURT: Okay.

And that's money from the proceeds of these two bank robberies?

MR. WEST: Yes, Your Honor.

THE COURT: The Court accepts the pleas to counts one and two as knowing, intelligent, and voluntary and not induced by fear, coercion, or ignorance, and the facts admitted to by Mr. West in open court constitute the essential elements of the crimes charged in counts one and two of the indictment.

10:03AM

The Court sets December, Thursday, December 4th at 9:30 a.m. here in Spokane as the time, date, and place for your sentencing.

35 days from now you'll get a copy of a Presentence Investigative Report to be done by a member of the U.S. Probation Office.

Mr. Fischer will explain that process to you.

If there are mistakes in that report, you can have them corrected.

10:03AM

If you can't resolve those, bring them to my attention at sentencing, and I will resolve them.

49 days from now you must file any motion you want me to consider at sentencing or you will have waived it and given it up.

Do you understand?

MR. WEST: Yes, Your Honor.

THE COURT: I'm going to defer the acceptance of the plea agreement itself until I see you at sentencing.

Is there anything else we need to deal with today, Mr. Fischer?

MR. FISCHER: No, Your Honor.

THE COURT: Okay.

Mr. Ohms?

MR. OHMS: No, Your Honor. Thank you.

10:03AM THE COURT: Thank you, folks. I'll see you then and there.

MR. WEST: Thank you, Your Honor.

THE COURT: Thank you.

(Whereupon Court was recessed at 10:05 a.m.)

STATE OF WASHINGTON)
: Reporter's Certificate
COUNTY OF SPOKANE)

I, Mark A. Snover, a Registered Professional Reporter and Official United States District Court Reporter;

DO HEREBY CERTIFY:

That the foregoing transcript contains a true and accurate transcription of my shorthand notes of all requested matters held in the foregoing captioned case.

Further, that the transcript was prepared by me or under my direction.

DATED this 24TH day of June, 2016.

/s/ Mark A. Snover
MARK A. SNOVER, RPR, CSR
OFFICIAL U. S. COURT REPORTER